

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

18 Cr. 567 (VSB)

CHRISTOPHER COLLINS,
CAMERON COLLINS, and
STEPHEN ZARSKY,

Defendants.

DECLARATION OF KENDALL WANGSGARD

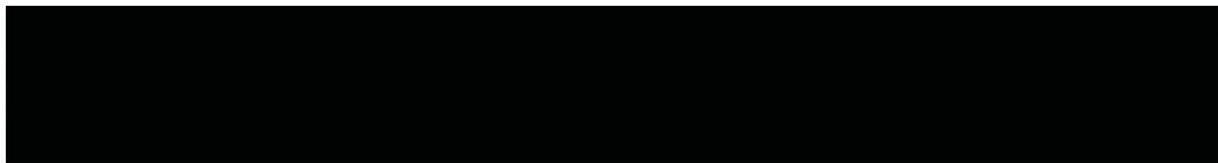
I, Kendall Wangsgard, Esq., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a senior associate at the firm of Baker Hostetler LLP, counsel for Congressman Collins (“Congressman Collins”) in the above-captioned matter.
2. I make this declaration in connection with Defendants’ Motion for the Production of *Brady* and Rule 16 Material. I am a member in good standing of the bars of New York, Washington, D.C. and Massachusetts and am admitted to practice before this Court. I have entered an appearance as counsel of record for Congressman Collins in this matter.
3. I have personal knowledge of the facts referenced herein.
4. In connection with my representation of Congressman Collins in this matter, I have reviewed various disclosures provided by the U.S. Attorney’s Office for the Southern District of New York, including those made pursuant to Fed. R. Crim. P. 16.



6. Attached hereto as **Exhibit B** is a true and correct copy of an email chain dated between July 2, 2018 and July 17, 2018, by and among counsel for Congressman Collins and the U.S. Attorney’s Office for the Southern District of New York.
7. Attached hereto as **Exhibit C1-C3** are true and correct copies of correspondence from AUSAs Williams, Hartman, and Nicholas to counsel for each Defendant dated August 22, 2018.

8. Attached hereto as **Exhibit D** is a true and correct copy of correspondence from Mauro M. Wolfe, Esq. to AUSAs Williams, Hartman, and Nicholas, dated September 13, 2018.
9. Attached hereto as **Exhibit E** is a true and correct copy of correspondence from Jonathan Barr, Esq. to AUSAs Williams, Hartman, and Nicholas, dated November 8, 2018.
10. Attached hereto as **Exhibit F** is a true and correct copy of correspondence from AUSAs Williams, Hartman, and Nicholas to counsel for Defendants, dated November 27, 2018.
11. Attached hereto as **Exhibit G** is a true and correct copy of correspondence from AUSAs Williams, Hartman, and Nicholas to Jonathan Barr, Esq., dated January 4, 2019.
12. Attached hereto as **Exhibit H** a true and correct copy of an email chain dated between January 25, 2019 and February 5, 2019, by and among counsel for Cameron Collins and the U.S. Attorney's Office for the Southern District of New York.



I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, DC
February 8, 2019



Kendall E. Wangsgard

A handwritten signature in blue ink, appearing to read "Kendall E. Wangsgard", is written over a blue horizontal line. The signature is fluid and cursive.

EXHIBIT A

UNDER SEAL

EXHIBIT B

Wangsgard, Kendall E.

From: New, Jonathan B.
Sent: Tuesday, July 17, 2018 3:30 PM
To: Allen, Robert (USANYS)
Cc: Barr, Jonathan R.; Hartman, Scott (USANYS); Nicholas, Max (USANYS); Wangsgard, Kendall E.
Subject: RE: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Bob,
Thanks for your email. As for your clarification, I just want to further clarify that we have requested a meeting without the attendance of the SEC and made our objection to their attendance known.

Could you please let us know who will be present tomorrow?

Best,
Jon

From: Allen, Robert (USANYS) <Robert.Allen@usdoj.gov>
Sent: Tuesday, July 17, 2018 2:57 PM
To: New, Jonathan B. <jnew@bakerlaw.com>
Cc: Barr, Jonathan R. <jbarr@bakerlaw.com>; Hartman, Scott (USANYS) <Scott.Hartman@usdoj.gov>; Nicholas, Max (USANYS) <Max.Nicholas@usdoj.gov>; Wangsgard, Kendall E. <kwangsgard@bakerlaw.com>
Subject: RE: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Jon,

Thanks for confirming. We're looking forward to hearing your presentation tomorrow at 11. One clarification: the statement in your email about our prior responses concerning who would be attending the meeting is incorrect. We did not say that the meeting could only go forward if the SEC attended. Rather, we asked for an explanation of what Rule 6 materials you are concerned about, and you did not identify any materials. In any event, and as you know, the SEC is conducting its own parallel investigation. It is therefore our expectation that the SEC will attend tomorrow's presentation.

Bob Allen

From: New, Jonathan B. <jnew@bakerlaw.com>
Sent: Tuesday, July 17, 2018 1:16 PM
To: Allen, Robert (USANYS) <RAllen@usa.doj.gov>
Cc: Barr, Jonathan R. <jbarr@bakerlaw.com>; Hartman, Scott (USANYS) <S>Hartman@usa.doj.gov>; Nicholas, Max (USANYS) <MNicholas@usa.doj.gov>; Wangsgard, Kendall E. <kwangsgard@bakerlaw.com>
Subject: Re: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Bob,
Just confirming for tomorrow at 11 am. From our side it will be Jon, Kendall and myself. Could you please let us know who you expect to attend for the government? From your prior responses we understand that in order for the meeting to go forward, the SEC must also attend, despite our objection.

Best,
Jon

Sent from my iPad

On Jul 12, 2018, at 5:45 PM, Allen, Robert (USANYS) <Robert.Allen@usdoj.gov> wrote:

Jon:

Both we and attorneys at the SEC have cleared our schedules for this meeting. If there is anything you want to say to us without the SEC present, you can ask the SEC to leave (and vice-versa). You haven't explained what Rule 6 concern you have, and we don't understand what it could be. You haven't produced any Rule 6 materials to us given your client's invocation of his Fifth Amendment rights, meaning that your presentation can't implicate Rule 6. As you know, we do not intend to discuss any Rule 6 materials.

All best.

Bob Allen

From: Barr, Jonathan R. <jbarr@bakerlaw.com>

Sent: Thursday, July 12, 2018 2:35 PM

To: Allen, Robert (USANYS) <RAllen@usa.doj.gov>; New, Jonathan B. <jnew@bakerlaw.com>; Hartman, Scott (USANYS) <SHartman@usa.doj.gov>; Nicholas, Max (USANYS) <MNicholas@usa.doj.gov>

Cc: Wangsgard, Kendall E. <kwangsgard@bakerlaw.com>

Subject: RE: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Bob,

Just to be clear, we don't agree with your position on our Rule 6 concern. However, is it your position that the meeting can only proceed if the SEC is present?

Best regards,

Jon

From: Allen, Robert (USANYS) <Robert.Allen@usdoj.gov>

Sent: Wednesday, July 11, 2018 10:38 AM

To: New, Jonathan B. <jnew@bakerlaw.com>; Hartman, Scott (USANYS) <Scott.Hartman@usdoj.gov>; Nicholas, Max (USANYS) <Max.Nicholas@usdoj.gov>

Cc: Wangsgard, Kendall E. <kwangsgard@bakerlaw.com>; Barr, Jonathan R. <jbarr@bakerlaw.com>; Williams, Damian (USANYS) 6 <Damian.Williams@usdoj.gov>

Subject: RE: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Jon:

I thought we had confirmed but we're all set for July 18th at 11:00 a.m. Apologies for any confusion on this.

I don't understand the Rule 6 concern with respect to the SEC attending this meeting. We do not expect to discuss Rule 6 materials at the meeting, and my assumption is that you would not be discussing any Rule 6 materials either. You haven't produced any documents or materials to us in response to grand jury process, so there shouldn't be any type of evidence that you would want to discuss but cannot with the SEC present. That said, if you feel a particular issue would fall within Rule 6 – or if for any other

reason you believe that the SEC's presence with respect to a particular issue would be inappropriate – you could of course ask them to step out while that issue was being discussed.

We do not intend to provide a reverse proffer before our meeting on the 18th. We have already told you that the focus for this presentation should be on insider trading in connection with Innate Immunotherapeutics' release of MIS416 results on June 27, 2017. We see that as a relatively confined universe of facts and events.

All best.

Bob Allen

From: New, Jonathan B. <jnew@bakerlaw.com>
Sent: Wednesday, July 11, 2018 9:53 AM
To: Hartman, Scott (USANYS) <SHartman@usa.doj.gov>; Allen, Robert (USANYS) <RAllen@usa.doj.gov>; Nicholas, Max (USANYS) <MNicholas@usa.doj.gov>
Cc: Wangsgard, Kendall E. <kwangsgard@bakerlaw.com>; Barr, Jonathan R. <jbarr@bakerlaw.com>
Subject: Rule 6(e) Grand Jury Material and Confidential Treatment Requested Under FOIA

Dear Scott, Robert and Max,

Thank you for arranging for us to meet with the leadership of the U.S. Attorney's Office in advance of any charging decisions by the Office. I think we are still waiting to receive confirmation from you of the time on the 18th, and a final confirmation that the 18th does work. Please let us know as soon as you can that the time and date are confirmed.

In regards to your email below, we wanted to respond briefly to your indication that it was your intention to invite members from the SEC Division of Enforcement to attend the meeting. Based on our past conversations with you, we understand that the U.S. Attorney's Office and the SEC are working on parallel, but not joint, investigations. As you are undoubtedly aware, we separately have been in communication with the SEC concerning their investigation. Although we have the highest regard for the SEC staff working on the SEC civil investigation, we do not believe it would be appropriate for the SEC Enforcement Division members to attend the proposed meeting with the leadership of the U.S. Attorney's Office. In particular, our meeting will concern a grand jury investigation conducted under Rule 6(e) grand jury secrecy protections, and, among other things, we expect to discuss our views of what should be considered by the U.S. Attorney's Office both in terms of deciding not to charge our client and the timing of those matters before the grand jury. We also understand that the SEC investigation is being conducted in accordance with the SEC Rules of Practice, under a different burden of proof, and without access to Rule 6(e) grand jury material. As a result, we respectfully ask that you not invite the SEC staff to the meeting. We intend to reach out separately to the SEC staff to discuss the civil investigation. As you know, the SEC's process for making enforcement recommendations typically provides individuals with a much different and more formal process, than is available in criminal investigations.

In advance of the tentatively scheduled meeting, we wanted to make one last plea for some type of reverse proffer of facts, evidence or issues that you think it would be helpful for us to address. Although we understand reverse proffers are not common in the Southern District of New York, the present circumstances are atypical and the Office would benefit from an informed discussion. As we discussed when we met in person, we were prepared to meet with three of you in the near future to discuss the substance of the case and other factors pertinent to your investigation. You seemed interested in having this conversation sooner rather than later so that you could incorporate these facts into your assessment of the case and your investigative steps. We also requested an opportunity to meet with

supervisors in the office prior to any charging decision, which, in our experience, is the usual practice in a high-profile case. These two meetings are, by their natures, usually slightly different in scope and content. However, as you have explained to us, you are now offering, on relatively short notice, only one combined meeting with the line prosecutors and the leadership of the U.S. Attorney's Office. Neither of us have ever seen this procedure utilized before. Given the combination of what is usually at least two meetings into one, we believe that a reverse proffer (of some sort) would give us the best opportunity to provide office leadership with a meaningful presentation. I am sure you can appreciate our desire to ensure that neither your office, the Congressman nor the public are disadvantaged by such a streamlined process, particularly in the middle of a high-stakes election. As we indicated in our prior discussions, we believe it is particularly important under the circumstances of this investigation, and given the lack of any impending statutes of limitations, that the U.S. Attorney's Office proceed deliberately in its investigation and carefully weigh all the facts and circumstances before reaching any charging decisions.

We look forward to meeting with you.

Best regards,
Jonathan

Jonathan New
Partner

<image001.jpg>
45 Rockefeller Plaza
New York, NY 10111-0100
T +1.212.589.4650

jnew@bakerlaw.com
bakerlaw.com
<image002.jpg><image003.jpg>

From: Hartman, Scott (USANYS) <Scott.Hartman@usdoj.gov>
Sent: Monday, July 02, 2018 3:35 PM
To: New, Jonathan B. <jnew@bakerlaw.com>; Barr, Jonathan R. <jbarr@bakerlaw.com>
Cc: Allen, Robert (USANYS) <Robert.Allen@usdoj.gov>; Nicholas, Max (USANYS) <Max.Nicholas@usdoj.gov>
Subject: Meeting July 16 or 18

Dear counsel,

We are writing to follow up on our meeting with you last week regarding your client, Christopher Collins. At that meeting, you requested the opportunity to meet with the leadership of the U.S. Attorney's Office in advance of any charging decisions by our Office. The U.S. Attorney and the other members of the Office leadership are available to meet with you on either July 16 or July 18. Please let us know if you would like to come in for a meeting on one of those dates.

As you know, we are conducting our investigation in parallel with a civil, regulatory investigation by the SEC. We expect to invite relevant officials from the SEC to be present for any meeting.

Thanks very much,

Scott, Bob and Max

Scott Hartman
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007
Tel: (212) 637-2357
Cell: (917) 836-3837

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EXHIBIT C

UNDER SEAL

EXHIBIT D

UNDER SEAL

EXHIBIT E

REDACTED

BakerHostetler

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Jonathan R. Barr
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jbarr@bakerlaw.com

November 8, 2018

CONFIDENTIAL TREATMENT REQUESTED UNDER FOIA

VIA EMAIL

Damian Williams, Esq. (Damian.Williams@usdoj.gov)
Scott Hartman, Esq. (Scott.Hartman@usdoj.gov)
Max Nicholas, Esq. (Max.Nicholas@usdoj.gov)
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

Re: *United States v. Collins, et al.*, 18 Cr. 567 (VSB) – Requests for Information
Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*,
405 U.S. 150 (1972)

Dear Damian, Scott, and Max:

We write on behalf of our client, Rep. Chris Collins, as well as the other defendants, Cameron Collins and Stephen Zarsky (collectively, the “Defendants”), to set forth requests pursuant to *Brady v. Maryland*. Although you indicated in your letter dated August 22, 2018 that the Government was “unaware of any *Brady* material” regarding our clients, certain FBI 302 reports contained within that production included exculpatory witness statements. Moreover, as set forth below, subsequent productions by the Government contained material that falls squarely within the ambit of *Brady*.

The Government’s August 31, 2018 production pursuant to Rule 16 (its second production) provided certain law enforcement documents, including FBI 302 reports of witness interviews and proffers. The review of those materials by Defendants revealed the existence of other FBI 302 reports (which were not produced) that clearly contained information required to be produced pursuant to *Brady*, including, [REDACTED]

[REDACTED] By a letter dated September 13, 2018, the Defendants notified the Government of items missing from its

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

Damian Williams, Esq. et al.

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Although we are now in possession of these items (some following our affirmative request), given the existence of *Brady* information within the Government's possession, we write to request that the Government undertake a complete review of its files and those of its law enforcement partners, including but not limited to the Federal Bureau of Investigation and the Securities and Exchange Commission ("SEC"), and produce any additional *Brady* material promptly. We ask that the Government include in its review any notes of or documents presented during any presentations or proffers made to the Government by any individual or entity concerning the investigation of this matter.

Specifically, the Defendants request immediate production of:

1. Information and/or documents indicating or tending to establish that the Defendants did not possess or provide material non-public information concerning Innate stock to each other or anyone else, as alleged in the Indictment;
2. Information and/or documents indicating or tending to establish that any Defendant or any alleged co-conspirator sold Innate shares based on any fact, circumstance or belief other than the possession of material, non-public information, including but not limited to the imposition of a trading halt on Innate shares;
3. Information and/or documents indicating or tending to establish that any person sold Innate shares during the period between June 22, 2017, through June 26, 2017, based on any fact, circumstance, or belief other than the possession of material, non-public information, including but not limited to the imposition of a trading halt on Innate shares;
4. Information and/or documents indicating or tending to establish that any Defendant or alleged co-conspirator lacked knowledge or information regarding (i) the source of the alleged material non-public information, or (ii) the circumstances surrounding the disclosure of such information;
5. Information and/or documents indicating or tending to establish that any of the Defendants, alleged co-conspirators, or witnesses interviewed during the Government's investigation were aware of the imposition of a trading halt on Innate shares during the period between (or prior to) June 22, 2017, through June 26, 2017;
6. Information and/or documents indicating or tending to establish that Christopher Collins did not expect that any of the Defendants or alleged co-conspirators would trade Innate shares based upon any information he allegedly provided to any of the Defendants or alleged co-conspirators;

Damian Williams, Esq. et al.

November 8, 2018

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7. Information and/or documents indicating or tending to establish that any Defendant had not communicated with, had not met, or did not know persons interviewed in the government investigation who possessed shares of Innate stock during the period between June 22, 2017, through June 26, 2017;
8. Information and/or documents indicating or tending to establish that any of the Defendants, alleged co-conspirators, witnesses interviewed during the Government's investigation, or others believed that the imposition of a trading halt of Innate shares was negative news or might foreshadow negative news;
9. Information and/or documents indicating or tending to establish that Christopher Collins did not inform Cameron Collins of any Innate drug trial results until after either the close of market trading at 4:00 PM EDT on June 26, 2017, or after the public announcement was made by Innate at 7:11 PM EDT on June 26, 2017; and, in turn, that Stephen Zarsky did not learn of any Innate drug trial results until after the public announcement on June 26, 2017;
10. Information and documents indicating or tending to establish that the existence of the Office of Congressional Ethics investigation did not prevent or may not have prevented Christopher Collins from selling shares of Innate stock;
11. Information and documents indicating or tending to establish that any Defendant engaged in any conduct that forms the basis of the indictment with the good faith belief that his conduct did not constitute a crime;
12. Information and documents indicating or tending to establish that any of the allegations in the indictment are not true;
13. A copy or summary of any exculpatory material or exculpatory statement contained in the SEC's investigative file, including any description of such material or statement memorialized in any Action Memorandum, including any litigation risk analysis, or other memoranda to the Securities and Exchange Commission, and any chronology developed by the Staff of the SEC Division of Enforcement that is in any way inconsistent with the allegations of the Indictment or the SEC civil complaint; and
14. The following categories of information for any potential witness at trial, or for any person whose statements will be introduced pursuant to Federal Rule of Evidence 801(d)(2)(C), (D) or (E):
 - i. all documents or information relating to conviction, charges, arrest, or criminal record for such individual;

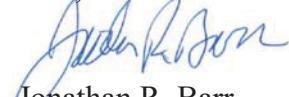
Damian Williams, Esq. et al.
November 8, 2018
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- ii. all documents or information relating to threats, promises, consideration, or inducements made to any such individuals, whether directly to the witness or indirectly to the witness's attorney, friends, family members, employer, or business associates. "Consideration" means anything of value or use, including immunity grants, whether formal or informal; witness fees; transportation assistance; money or other financial assistance; or assurances, promises, or suggestions of favorable treatment with respect to any criminal, civil, or administrative manner, including any cooperation agreements with the SEC or other governmental or regulatory entity;
- iii. each specific instance of conduct from which it can be inferred that any potential prosecution witness is or has been untruthful;
- iv. all statements or documents made or executed by any such individual that the government knows to be false;
- v. all statements by any such individual that he or she is not aware of any wrongdoing by any Defendant or alleged co-conspirator; and
- vi. all documents or information reflecting any potential or actual bias against or hostility toward any Defendant.

With respect to item number 14, the Government's failure to disclose this information sufficiently in advance of trial would create a substantial risk of prejudice to the defense. Accordingly, we are requesting the Government to produce these materials at this time to allow us to conduct a complete and thorough investigation of the information disclosed and to prepare an effective defense for our clients. *See, e.g., Giglio v. United States*, 405 U.S. 150 (1972).

If you have any questions regarding these requests, please do not hesitate to call us. We are available at your convenience to meet and confer with you for the purpose of resolving or narrowing any potential disagreements that we may have regarding these requests.

Best,



Jonathan R. Barr
Jonathan B. New
Kendall E. Wangsgard

cc:

Rebecca M. Ricigliano
Thomas A. Hanusik
Patrick S. Brown

Damian Williams, Esq. et al.

November 8, 2018

Page 5

Mauro M. Wolfe

Amanda L. Bassen

EXHIBIT F

REDACTED



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 27, 2018

Jonathan Barr, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5304

Rebecca Ricigliano, Esq.
Crowell & Moring LLP
590 Madison Avenue
New York, NY 10022

Mauro Wolfe, Esq.
Duane Morris LLP
1540 Broadway
New York, NY 10036

**Re: *United States v. Christopher Collins et al.*
18 Cr. 567 (VSB)**

Dear Counsel:

The Government writes in response to your letter dated November 8, 2018 (the “November 8 Letter” or “Letter”). In your Letter, you make requests for information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972). The Government hereby writes to respond to those requests, and also to provide information about statements made by two individuals during meetings with the Government.

As an initial matter, the Government is fully aware of its constitutional and statutory discovery obligations, and intends to comply with such obligations.¹ As you know, in light of the Government’s production of certain notes and FBI 302s of witness interviews well in advance of

¹ In your Letter, you state that your request to the United States Attorney’s Office for the Southern District of New York (the “Office”) for documents includes all requested documents not only in the possession of the Office, but also the United States Securities and Exchange Commission (the “SEC”). (See, e.g., Request 13.) You are incorrect that this Office is obligated to obtain and produce to you documents from the SEC (or any other federal agency besides the FBI, our law enforcement partner in this criminal investigation). The SEC’s investigation in this matter was

the February 2020 trial date, the Government has approached all of its disclosure obligations with appropriate care and seriousness, and will continue to do so. The Government also disagrees with your characterization at pages 1-2 of the November 8 Letter that items the Government has produced to you thus far contain material “that falls squarely within the ambit of” *Brady*.

In regard to your specific requests, we respond as follows:

Requests 1-12

These requests broadly call for the production of material required to be produced pursuant to *Brady*. The Government is aware of its obligations under *Brady* and is complying with them. Please note that the Government understands that its obligations under *Brady* are ongoing.²

Request 14

This request broadly calls for the production of materials required to be produced pursuant to *Giglio*. In keeping with the general practice in this District, the Government intends to produce impeachment material under *Giglio* at the same time as Jencks Act material. The parties can discuss a schedule for the production of Jencks Act and *Giglio* material.

Statements Made by Two Individuals

Please be advised that on or about July 11, 2018,

parallel to the criminal investigation, and was not a joint investigation with criminal authorities. The Government is therefore under no obligation to search the files of the SEC for materials responsive to your requests. The Government also notes that in any event, you will be receiving certain party document discovery from the SEC pursuant to the Order entered by Judge Failla dated November 9, 2018 in *SEC v. Christopher Collins, et al.*, 18 Civ. 7128 (KPF).

² To be clear, the Government does not agree that all of the categories of information described in Requests 1-12 would constitute *Brady* materials. Rather, the Government understands its obligation to produce any materials that do fall within the scope of *Brady*, and to the extent that the Government becomes aware of any such materials in its possession that have not already been produced to the defendants, the Government will promptly produce such materials.

[REDACTED]

We remain available to discuss any specific questions you might have about any particular item of discovery, or to discuss any additional requests for material that you might have.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

by: _____/s/_____
Damian Williams/Scott Hartman/Max Nicholas
Assistant United States Attorneys
(212) 637-2298/2357/1565

EXHIBIT G

REDACTED



United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 4, 2019

BY E-MAIL

Jonathan Barr, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5304

Re: United States v. Christopher Collins et al.,
18 Cr. 567 (VSB)

Dear Mr. Barr:

We write in response to your letter of December 3, 2018 (the “December 3rd Letter”), which, among other things, seeks details regarding information this Office obtained from current and former members of Representative Collins’s congressional staff in connection with our investigation of insider trading in the stock of Innate Immunotherapeutics (“Innate”). At the outset it should be noted that throughout the investigation, this Office has been mindful and respectful of the Congressman’s privilege under the Speech or Debate Clause of the Constitution, including by avoiding making inquiries of any potential witness concerning Rep. Collins’s legislative activities, and by assigning members of the U.S. Attorney’s Office other than the prosecutors working on the investigation to conduct initial reviews of materials that were obtained from current and former members of Rep. Collins’s staff. However, we also recognize that the Speech or Debate privilege does not provide a shield for elected officials to engage in criminal conduct, as “legislators ought not to stand above the law they create but ought generally to the bound by it as are ordinary persons.” *Gravel v. United States*, 408 U.S. 606, 615 (1972); *see also, e.g., United States v. Brewster*, 408 U.S. 501, 516 (1972) (noting that while “the Speech or Debate Clause must be read broadly to effectuate its purpose of protecting the independence of the Legislative Branch,” the Clause was not designed “to make Members of Congress super-citizens, immune from criminal responsibility”).

With this background in mind, below we address your specific requests for information:¹

¹ In your December 3rd Letter, you assert various legal positions and make various factual representations. The Government addresses herein only those positions and representations that are relevant to the requests set forth in your letter. To the extent that this letter does not address certain legal positions or factual statements that you articulate, it should not be viewed as expressing agreement with such positions or statements.

1. The entire contents of any materials or devices obtained from, or produced by, any current or former member of Rep. Collins' Congressional staff

To the extent these requests call for information provided by current and former staffers in response to compulsory process, we have already provided those materials to you, in their entirety, in discovery.

To the extent you seek material seized pursuant to search warrants, as discussed below, the Government has disclosed all materials responsive to the respective warrants. To the extent you seek additional materials obtained by the Government that are not responsive to those warrants, that is, materials that the Government was not authorized by the warrants to seize and utilize, the Government will not produce such materials. Consistent with developing law in this area, the Government does not view itself as having a right to disclose to third parties material that was not identified as responsive to the corresponding warrant. *See United States v. Grant*, No. 16 Cr. 469 (GHW) (12/26/18 Tr. at 7133-35) (expressing concern regarding the Government's overproduction of non-responsive ESI to third parties in discovery; noting with approval the Office's new policy not to produce (without consent) non-responsive materials obtained via search warrants in discovery; and stating that it was "fairly clear that Rule 16 does not require such a dramatic overproduction"); *see also United States v. John Galanis, et al.*, No. 16 Cr. 371 (RA) (8/3/17 Tr. at 13-14) (holding that "the government need not and may not review files or emails for *Brady* or otherwise once they are determined to be nonresponsive" to a search warrant).



Moreover, to the extent your request suggests that the mere searches of these personal email accounts implicate the Congressman's Speech or Debate privilege, the Government disputes both the legal and factual underpinnings of such a position. While you cite the D.C. Circuit's decision in *United States v. Rayburn House Office Building, Room 2113, Washington, D.C. 20515*, 497 F.3d 654 (D.C. Cir. 2007) ("Rayburn") for the contention that the Speech or Debate Clause provides a privilege of non-disclosure of covered materials, the weight of authority establishes that the privilege is more correctly viewed as evidentiary in nature. *See United States v. Renzi*, 651

F.3d 1012, 1035-36 (9th Cir. 2011) (holding that the privilege is one of use, not disclosure, when the disclosure is sought in the context of an investigation into otherwise unprotected activity); *In re Fattah*, 802 F.3d 516, 528-29 (3d Cir. 2015) (“Accordingly, while the Speech or Debate Clause prohibits hostile questioning regarding legislative acts in the form of testimony to a jury, it does not prohibit disclosure of Speech or Debate Clause privileged documents to the Government. Instead, as we have held before, it merely prohibits the evidentiary submission and use of those documents.”). Factually, this matter could not be further afield from *Rayburn*, which involved the physical search of a congressional office.



3. All statements made by any current or former member of Rep. Collins’ Congressional staff including, but not limited to, notes, FBI 302s, and grand jury transcripts of testimony

The Government is not aware of any legal authority (and your December 3rd Letter cites none) that would entitle you to the production of such materials. To the extent any such materials contain potentially exculpatory information, that has been produced to the defendants. To the extent that any individuals whose statements you now seek will be witnesses at the February 2020 trial, such statements will be produced in accordance with Section 3500 before trial. You are simply not entitled to such materials over a year before the trial is set to commence.

As discussed, throughout this investigation the Government has been mindful of Congressman Collins’s privilege under the Speech or Debate Clause and has taken care not to elicit information that could conceivably implicate that privilege. To the extent Congressman Collins is concerned that the Government may inadvertently offer at trial information that is protected by the Clause, the proper remedy is to object to the admission of that evidence at the appropriate time. *See United States v. Rostenkowski*, 59 F.3d 1291, 1301 (D.C. Cir. 1995) (“[A]ssuming that the indictment is valid on its face, the Speech or Debate Clause does not require pre-trial review of the evidence to be presented at trial.”).

4. Any materials provided or shown to the grand jury related to any investigation by the U.S. House of Representatives Office of Congressional Ethics or Committee on Ethics relating to Rep. Collins

5. Transcripts of any grand jury testimony referencing or relating to any investigation by the U.S. House of Representatives Office of Congressional Ethics or Committee on Ethics relating to Rep. Collins

With respect to these two requests, the Government is not aware of any authority that would entitle you to these materials. As you are aware, grand jury proceedings are presumptively secret. In order to obtain access to grand jury material, at a minimum, a defendant alleging that the grand jury process was infected by a violation of the Speech or Debate Clause “must be able to provide, either from the allegations of the indictment or from some other source, at least some reason to

believe that protected information was used to procure his indictment.” *Rostenkowski*, 59 F.3d at 1313.

To date, the only basis you have asserted to believe that protected material was considered by the grand jury is the Indictment’s reference to the fact that, at the time of the charged conduct, Representative Collins was “under investigation by the Office of Congressional Ethics (“OCE”)” and had been interviewed in connection with that inquiry. Contrary to your suggestion, this reference does not indicate that the grand jury was presented with evidence concerning “legislative acts” of the Congressman, so as to implicate the Speech or Debate Clause. *See Gravel v. United States*, 408 U.S. 606, 624–25 (1972). The Indictment does not state or imply that the grand jury heard evidence regarding the *content* of the Congressman’s statements to the OCE, merely that the grand jury was made aware of the fact that he was interviewed. Indeed, the fact that the Congressman was under investigation by the OCE was a matter of public record even prior to this grand jury investigation.

In any event, statements to a congressional ethics body come within the ambit of the Speech or Debate Clause only if the investigation concerns the “legislative acts” of the member being interviewed. *United States v. Rose*, 28 F.3d 181, 188 (D.C. Cir. 1994). Here, as you know, the OCE inquiry concerned matters entirely unrelated to the Congressman’s legislative function. Indeed, the only allegation even remotely tied to the Congressman’s official status was an inquiry into whether he improperly sought to influence the Food and Drug Administration on Innate’s behalf. Notably, such efforts to “cajole” and “exhort” Executive Branch officials “with respect to the administration of a federal statute” are not protected by the Speech or Debate Clause. *Gravel*, 408 U.S. at 625.

6. Any communications wherein any member or former member of Rep. Collins’ staff references any investigation by the U.S. House of Representatives Office of Congressional Ethics or Committee on Ethics relating to Rep. Collins

As discussed above, we have provided in discovery all communications (emails, text messages, etc.) that were produced in response to compulsory process or identified as responsive to one of the Government’s search warrants. To the extent this request calls for documents memorializing statements of potential witnesses, we see no reason to provide those at this point. To the extent the Government may seek at trial to offer witness testimony regarding these matters, you are free to assert an objection at that point.

7. An explanation of any precautions with regard to potentially privileged documents taken by the government in reviewing electronic communications, devices and other materials obtained from, or produced by, any current or former member of Rep. Collins’ Congressional staff, including but not limited to the use of a “taint team”



Very truly yours,

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

By: /s/

Damian Williams/Scott Hartman/Max Nicholas
Assistant United States Attorneys
(212) 637-2298/2357/1565

EXHIBIT H

REDACTED

Subject: FW: Follow up to our discussion

-----Original Message-----

From: Hartman, Scott (USANYS) [mailto:Scott.Hartman@usdoj.gov]
Sent: Tuesday, February 5, 2019 10:52 PM
To: Hanusik, Thomas; Ricigliano, Rebecca
Cc: Williams, Damian (USANYS) 6; Nicholas, Max (USANYS); Brown, Patrick
Subject: RE: Follow up to our discussion

External Email

Tom,

Thanks for your follow up.

We did not apply search terms to the data we obtained from the service providers before determining what information was responsive to the warrants. In other words, you don't need to be concerned that responsive data would not have been seized and produced to you because it failed to hit on a particular term.

That is not to say that in some cases we didn't use keyword searches to make sure that we were identifying all responsive documents and looking at all of the relevant communications. But we did not limit our review to these search results. Rather, we did a holistic review of the data we got from the service provider.

The only caveat is that, in some cases, we conducted our responsiveness review after a wall team had screened the data for privilege. I don't know what protocols were followed for that review, but generally the wall team would use terms like "Esq." or known firm names to identify and filter out privileged material.

Scott

-----Original Message-----

From: Hanusik, Thomas <THanusik@crowell.com>
Sent: Tuesday, February 5, 2019 4:02 PM
To: Hartman, Scott (USANYS) <SHartman@usa.doj.gov>; Ricigliano, Rebecca <RRicigliano@crowell.com>
Cc: Williams, Damian (USANYS) 6 <DWilliams6@usa.doj.gov>; Nicholas, Max (USANYS) <MNicholas@usa.doj.gov>;
Brown, Patrick <PBrown@crowell.com>
Subject: RE: Follow up to our discussion

Scott,

Thanks for your response. I just want to make sure that I correctly understand your response to question 2 regarding whether you had used search terms initially or at any point to determine responsiveness of ESI.

Does your response confirm that, for all of the ESI obtained by the government during its investigation through search warrants, including all email accounts, iCloud accounts, social media accounts, and any other account or electronic device, no "search terms" were used in any way to assist in determining responsiveness to the warrants or for filtering

items that needed to be reviewed? In other words, the FBI or someone on your team reviewed every ESI file and document individually for responsiveness to the relevant warrant?

Is that also true for all of the ESI obtained consensually or provided voluntarily by any alleged co-conspirator or current or former staffer of Congressman Collins?

We just want to make sure for purposes of filing our motions this week that we accurately understand whether search terms were used at all. If search terms were used at any point, would you please tell us for which ESI search terms were used and provide us the list of those search terms?

Thanks.

Best,

Tom

Tom Hanusik

Crowell & Moring LLP

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Washington, DC 20004

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fax: 202-628-5116

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-----Original Message-----

From: Hartman, Scott (USANYS) [mailto:Scott.Hartman@usdoj.gov]

Sent: Tuesday, February 5, 2019 8:49 AM

To: Ricigliano, Rebecca

Cc: Williams, Damian (USANYS) 6; Nicholas, Max (USANYS); Hanusik, Thomas; Brown, Patrick

Subject: Re: Follow up to our discussion

External Email

Thanks much,
Rebecca

Rebecca Monck Ricigliano
rricigliano@crowell.com<mailto:rricigliano@crowell.com>
Direct: 1.212.895.4268

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EXHIBIT I

UNDER SEAL